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COUNSEL

Perkins
Coie

Karl J. Sandstrom
Phone 202 434 1639
Fax 202 654 91114
Email ksandstrom@perkinscoie.com

2004 NOV 22 P 4: 56

607 Fourteenth Street N.W.
Washington, D.C. 20005-2011
PHONE 202 628 6600
FAX 202 434 1690
www.perkinscoie.com

November 22, 2004

BY HAND DELIVERY

Mr. Lawrence H. Norton
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5582

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OPERATIONS CENTER
2004 NOV 22 P 3: 15

Dear Mr. Norton:

On behalf of Congressman Neil Abercrombie; Abercrombie for Congress; and Jack Y. Endo, Treasurer (collectively, "Respondents"), this letter is submitted in response to the complaint filed by Samuel M. Slom ("the Complaint") and subsequently labeled MUR no. 5582. A designation of counsel is on file with your office. This complaint should be immediately dismissed.

The Commission may find "reason to believe" only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation. *See* 11 C.F.R. §§ 111.4(a), (d) (2004). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true, and provide no independent basis for investigation. *See* Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons, MUR 4960 (Dec. 21, 2001).

**A. There Is No Reason to Believe That the Named Contributors
Made Illegal Contributions**

The Complaint argues that "there are numerous contributions [to Abercrombie for Congress] from architectural firms, engineering firms, contractors and others who have either been convicted of making illegal campaign contributions and/or have been fined or sanctioned by the State Commission prior to making contributions to

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November 22, 2004

Page 2

ABERCROMBIE.” Complaint at p. 8. This allegation, even if true, simply does not constitute a violation of federal election law. Nothing bars individuals who have admitted prior state or federal campaign finance violations from contributing to federal campaigns. The Complaint is nothing more than an attempt to tar Respondents with unfounded allegations about the present conduct of individuals based on nothing more than admitted and resolved improprieties by those individuals or persons with whom they are associated in prior elections.

The Complaint also insinuates that the named contributors may have given excessive contributions, or contributions in the name of another, in violation of 2 U.S.C. §§ 441a(a)(1)(A), 441f (2004). Yet it identifies “no source of information that reasonably gives rise to a belief in the truth of the allegations presented.” Statement of Reasons, MUR 4960. The Complaint maintains that the fact that contributors have previously been investigated for state campaign finance violations in prior election cycles is, in and of itself, enough to warrant a Commission investigation into whether these individuals violated federal campaign finance law, even though there is otherwise no reason to believe that they have done so. This allegation is without a factual foundation and amounts to mere speculation on the part of the complainant. It certainly does not provide a factual basis for finding reason to believe against Respondents.

Finally, the Complaint states that “these contributors have or had contracts with the United States for work within their area of expertise.” Complaint at p. 8. This statement is presumably meant to allege that the named contributors are federal contractors within the meaning of 2 U.S.C. § 441c. This charge is without merit. The complaint describes contributions from individuals; individual employees of federal contractor corporations are not prohibited from contributing to federal campaigns. *See* 11 C.F.R. § 115.6. More importantly, the complaint does not contain a single fact that indicates that these individuals, or their corporations, are federal contractors.

B. There Is No Reason to Believe That Respondents Knew, or Should Have Known, That the Contributions Were Illegal

Assuming *arguendo* that the Complaint’s unfounded allegations against the *contributors* are true, the Complaint still has not recited “facts which describe a violation of a statute or regulation” by Respondents. *Id.* § 111.4(d)(3). Even if the contributions were made by federal contractors, or were made in the name of another, Respondents have not violated federal law unless, after discovery of the illegal

26044134321

November 22, 2004

Page 3

contribution, they fail to refund the contribution. Because the Complaint does not establish that the contributions were illegal, Respondent is not required to refund the contributions. Merely alleging that some contributor may have violated the law does not make out a violation of law by the recipient of the contribution.

If contributions "present genuine questions as to whether they were made by . . . Federal contractors," they must be either refunded, or the treasurer must make "best efforts to determine the legality of the contribution." *Id.* § 103.3(b)(1). If the treasurer later discovers that the contribution is either from a federal contractor, or was made in the name of another, the treasurer must refund the contribution. *Id.* § 103.3(b)(2).

Even if the Complaint's allegations are correct – and there is no reason to believe that they are – the contributions on their face do not present genuine questions of legality. Moreover, to this day Respondents have no reason to believe that the contributions are from a prohibited source, or are made in the name of another. Therefore, even if all of the facts and allegations are assumed to be true, the Complaint does not describe a violation of law by Respondents.

Because the Complaint does not set forth sufficient facts to constitute a violation of federal law by Respondents, the Complaint should be dismissed immediately and the file should be closed.

Very truly yours,



Karl J. Sandstrom
Counsel to Congressman Neil Abercrombie
Abercrombie for Congress
Jack Y. Endo, Treasurer

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